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REMARKS

Applicant thanks the Examiner for the thorough consideration given the present application. Claims 1-9, 14, and 17 are pending, of which claims 1, 14, and 17 are independent. Claims 4, 8, and 14 are amended to address minor informalities; claim 17 is amended for consistency.

Applicant traverses the rejection of claims 1-9, 14, and 17 under 35 U.S.C. §103(a) as being unpatentable over Brilla et al. (U.S. 6,389,276) in view of Helferich (U.S. 6,636,733) and Shaffer (U.S. 6,021,114).

Independent claims 1, 14, and 17 are directed to a method of and apparatus for transferring a recorded audio message to a mobile device across a mobile radio infrastructure. A caller whose call cannot be completed is transferred to a service system to record an audio message, which is converted to a data message and sent at a time determined to avoid peak traffic loadings on the mobile radio infrastructure. The data message is not sent in response to any request from the mobile device; rather, the data message is "pushed" to the mobile device.

None of Brilla, Helferich, and Shaffer, taken alone or in combination, discloses or suggests a method or apparatus having

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the combinations of steps and elements set forth in independent claims 1, 14, and 17.

The Office Action acknowledges that Brilla does not disclose pushing a recorded audio message to a mobile entity, but relies on Helferich for this feature. However, neither passage of Helferich cited in the Office Action in rejecting independent claims 1, 14, and 17 includes such a disclosure.

Column 6, lines 50-63, is a continuation of a description beginning at line 21 regarding how mobile phone 10 can originate e-mail messages. Column 6, lines 54 and 55, indicates the mobile phone connects to the Internet to *send* a message or *place* a phone call to message processor 18. In the next sentence, Helferich refers to an alternative of indicating to an e-mail server that the mobile phone wishes to *send* a message, e.g., a voice message to a particular destination. Clearly, the relied-on portion of Helferich is **not** concerned with converting a recorded audio message to a data message that is pushed to a mobile phone.

At column 7, lines 56-67, Helferich describes how a web-based e-mail server can be arranged to notify message processor 18 upon receiving an e-mail with a voice attachment. The message processor then calls the mobile phone and plays the message to the mobile phone user. In other words, the voice attachment is **not** converted

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into a data message and pushed to the mobile phone. Instead, the voice attachment is used by the message processor to play a voice message to the mobile phone as a phone call.

Clearly, the cited portions of Helferich fail to disclose or suggest recording a audio message from a caller and converting the recorded audio message into a data message addressed to a mobile entity or pushing the data message to the mobile entity over a data-capable bearer service for a mobile radio infrastructure at a non-peak traffic loading time. Accordingly, contrary to the assertion in the Office Action, it would not have been obvious to one of ordinary skill in the art to modify Brilla to include these features. Therefore, independent claims 1, 14, and 17 are not obvious from Brilla, Helferich, and Shaffer, taken alone or in combination.

Claims 2-9 depend from and are allowable for at least the same reasons as independent claim 1, as well as for the additional limitations provided by these dependent claims. With respect to claim 2, the Office Action contends it would have been obvious to one of ordinary skill in the art to modify Brilla and Helferich in view of Shaffer to include pushing the data message through the mobile radio infrastructure to the mobile entity at a time corresponding to an off-peak charging rate according to a

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predetermined tariff schedule held or accessed by the service system.

However, as explained in the Amendment filed March 10, 2005, the purposes of the Brilla and Shaffer arrangements are completely different from one another. In Shaffer, a communication switch delays sending data files that have already been sent by a sending endpoint entity until traffic levels fall below a threshold. In contrast, Brilla seeks to notify an intended recipient as quickly as possible of awaiting voicemail (see column 5, line 67). To the extent Helferich is concerned with voice messages (see primarily column 7), associated data messages serve as notification messages and, as with Brilla, that are sent to mobile phone 10 as quickly as possible. Delaying notification messages would not be useful. As a result, there is no motivation to combine Shaffer with Brilla and Helferich.

Again without commenting on Applicant's arguments, the Office Action repeats for the third time the allegation that it would have been obvious to combine Brilla, Helferich, and Shaffer to reduce the cost of sending a message. *This is not correct.* As previously discussed, the Brilla arrangement is inexpensive by its very nature. Incorporating Shaffer's delay feature would actually add to the

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cost, not that one of ordinary skill in the art would do so, since importing Shaffer would contravene the objects of the Brilla system.

In view of the foregoing amendments and remarks, favorable reconsideration and allowance are deemed in order, and such action is respectfully requested.

To the extent necessary during prosecution, Applicant hereby requests any required extension of time not otherwise requested and hereby authorizes the Commissioner to charge any prescribed fees not otherwise provided for, including application processing, extension of time, and extra claims fees, to Deposit Account No. 08-2025.

Respectfully submitted,

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